

**NEW SECTION.** Sec. 55. Section headings, part headings, and the index as used in this act do not constitute any part of the law.

**NEW SECTION.** Sec. 56. This act shall be liberally construed to give effect to the intent of this act.

**NEW SECTION.** Sec. 57. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** Sec. 58. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 5, 1990.

Passed the Senate March 3, 1990.

Approved by the Governor March 14, 1990, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 14, 1990.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 48, Engrossed Substitute House Bill No. 1825 entitled:

"AN ACT Relating to high capacity transportation systems."

Section 48 changes a reference in current law from "rail development" account to "high capacity transportation" account. Section 308(2)(a) of Engrossed Substitute Senate Bill No. 6358, an act relating to transportation taxes, amends the same section of current law in a similar manner and makes additional revisions. In order to avoid duplicative amendments, I am vetoing section 48.

With the exception of section 48, Engrossed Substitute House Bill No. 1825 is approved."

## CHAPTER 44

[Substitute Senate Bill No. 6167]

### MOTOR VEHICLES—UNLAWFUL TRANSFER OF SUBLEASING OF

AN ACT Relating to unlawful subleasing or transferring of an ownership interest in motor vehicles; amending RCW 46.70.180; adding a new chapter to Title 19 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. The legislature finds that the practices of unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles have a substantial negative impact on the state's financial institutions and other businesses engaged in the financing and leasing of motor vehicles.

**NEW SECTION.** Sec. 2. The legislature finds that the practice of unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles is a matter vitally affecting the public interest for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

**NEW SECTION.** Sec. 3. The definitions set forth in this section apply throughout this chapter, unless the context requires otherwise:

(1) "Debtor" has the meaning set forth in RCW 62A.9-105(1)(d).

(2) "Motor vehicle" means a vehicle required to be registered under chapter 46.16 RCW.

(3) "Person" means an individual, company, firm, association, partnership, trust, corporation, or other legal entity.

(4) "Security agreement" has the meaning set forth in RCW 62A.9-105(1)(l).

(5) "Security interest" has the meaning set forth in RCW 62A.1-201(37).

(6) "Secured party" has the meaning set forth in RCW 62A.9-105(1)(m).

**NEW SECTION.** Sec. 4. Unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

**NEW SECTION.** Sec. 5. (1) It is a violation of this chapter for a vehicle dealer, as defined in RCW 46.70.011(3), to engage in the unlawful transfer of an ownership interest in motor vehicles.

(2) It is a violation of this chapter for a person to engage in the unlawful subleasing of motor vehicles.

**NEW SECTION.** Sec. 6. A dealer engages in an act of unlawful transfer of ownership interest in motor vehicles when all of the following circumstances are met:

(1) The dealer does not pay off any balance due to the secured party on a vehicle acquired by the dealer, no later than the close of the second business day after the acquisition date of the vehicle; and

(2) The dealer does not obtain a certificate of ownership under RCW 46.12.140 for each used vehicle kept in his or her possession unless that certificate is in the possession of the person holding a security interest in the dealer's inventory; and

(3) The dealer does not transfer the certificate of ownership after the transferee has taken possession of the motor vehicle.

**NEW SECTION.** Sec. 7. A person engages in an act of unlawful subleasing of a motor vehicle if all of the following conditions are met:

(1) The motor vehicle is subject to a lease contract or security agreement the terms of which prohibit the transfer or assignment of any right or

interest in the motor vehicle or under the lease contract or security agreement; and

(2) The person is not a party to the lease contract or security agreement; and

(3) The person transfers or assigns or purports to transfer or assign any right or interest in the motor vehicle or under the lease contract or security agreement to any person who is not a party to the lease contract or security agreement; and

(4) The person does not obtain, before the transfer or assignment described in subsection (3) of this section, written consent to the transfer or assignment from the motor vehicle lessor in connection with a lease contract or from the secured party in connection with a security agreement; and

(5) The person receives compensation or some other consideration for the transfer or assignment described in subsection (3) of this section.

NEW SECTION. Sec. 8. (1) A person engages in an act of unlawful subleasing of a motor vehicle when the person is not a party to the lease contract or security agreement, and assists, causes, or arranges an actual or purported assignment as described in section 7 of this act.

(2) A dealer engages in an act of unlawful transfer of an ownership interest in a motor vehicle when the dealer is not a party to the security agreement, and assists, causes, or arranges an actual or purported transfer as described in section 6 of this act.

NEW SECTION. Sec. 9. Unlawful subleasing or unlawful transfer of an ownership interest in a motor vehicle is a class C felony punishable under chapter 9A.20 RCW.

NEW SECTION. Sec. 10. A violation of this chapter constitutes an act of criminal profiteering, as defined in RCW 9A.82.010.

NEW SECTION. Sec. 11. (1) Any one or more of the following persons who suffers damage proximately resulting from one or more acts of unlawful motor vehicle subleasing or unlawful transfer of an ownership interest in a motor vehicle may bring an action against the person who has engaged in those acts:

(a) A secured party;

(b) A debtor;

(c) A lessor;

(d) A lessee;

(e) An actual or purported transferee or assignee;

(f) A guarantor of a lease or security agreement or a guarantor of a purported transferee or assignee.

(2) In an action for unlawful subleasing or unlawful transfer of an ownership interest in a motor vehicle the court may award actual damages; equitable relief, including, but not limited to an injunction and restitution of

money and property; reasonable attorneys' fees and costs; and any other relief that the court deems proper.

**NEW SECTION.** Sec. 12. (1) The actual or purported transfer or assignment, or the assisting, causing, or arranging of an actual or purported transfer or assignment, of any right or interest in a motor vehicle or under a lease contract or security agreement, by an individual who is a party to the lease contract or security agreement is not an act of unlawful subleasing of or unlawful transfer of an ownership interest in a motor vehicle and is not subject to prosecution.

(2) This chapter does not affect the enforceability of any provision of a lease contract or security agreement by a party thereto.

**NEW SECTION.** Sec. 13. The penalties under this chapter are in addition to any other remedies or penalties provided by law for the conduct proscribed by this chapter.

Sec. 14. Section 16, chapter 74, Laws of 1967 ex. sess. as last amended by section 20, chapter 415, Laws of 1989 and RCW 46.70.180 are each amended to read as follows:

Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2) To incorporate within the terms of any purchase and sale agreement any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually

due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold to a person for a consideration and upon further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Taking from a prospective buyer of a vehicle a written order or offer to purchase, or a contract document signed by the buyer, which:

(a) Is subject to the dealer's, or his authorized representative's future acceptance, and the dealer fails or refuses within forty-eight hours, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer, to deliver to the buyer either the dealer's signed acceptance or all copies of the order, offer, or contract document together with any initial payment or security made or given by the buyer, including but not limited to money, check, promissory note, vehicle keys, a trade-in, or certificate of title to a trade-in; or

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer as part of the purchase price, for any reason except substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesman to refuse to furnish, upon request of a prospective purchaser, the name and address of the previous registered owner of any used vehicle offered for sale.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle.

(9) For a dealer, salesman, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser prior to the delivery of the bargained-for vehicle, to commingle said "on deposit" funds

with assets of the dealer, salesman, or mobile home manufacturer instead of holding said "on deposit" funds as trustee in a separate trust account until the purchaser has taken delivery of the bargained-for vehicle. Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: **PROVIDED, HOWEVER,** That a motor vehicle dealer may keep a separate trust account which equals his customary total customer deposits for vehicles for future delivery.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales agreement signed by the seller and buyer.

(11) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.94 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: **PROVIDED,** That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) said cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: **PROVIDED,** That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith.

(c) Encourage, aid, abet, or teach a vehicle dealer to sell vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser of any new or unused vehicle that has been sold, distributed for sale, or transferred into this state for resale by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (11)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(12) Unlawful transfer of an ownership interest in a motor vehicle as defined in section 6 of this act.

NEW SECTION. Sec. 15. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 16. Sections 1 through 13 of this act shall constitute a new chapter in Title 19 RCW.

Passed the Senate January 29, 1990.

Passed the House March 1, 1990.

Approved by the Governor March 14, 1990.

Filed in Office of Secretary of State March 14, 1990.